

EX PARTE OR LATE FILED

PR 93-35

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

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April 21, 1994

**via Hand Delivery**

Edward R. Jacobs, Acting Chief  
Land Mobile and Microwave Division  
Private Radio Bureau  
Federal Communications Commission  
Washington, D.C. 20554

**Re: Greenline Partners, Inc.  
Clarity Medical Corporation  
Request for Rule Waiver**

Dear Mr. Jacobs:

Transmitted herewith, on behalf of Greenline Partners, Inc. and its affiliated entity, Clarity Medical Corporation, please find the original and four (4) copies of its Request for Rule Waiver, seeking a temporary waiver of the 300 transmitter requirement for nationwide exclusivity in the 929 MHz frequency band, 47 C.F.R. § 90.495(a)(3).

NABER has previously coordinated and filed with the FCC the 929 MHz applications referenced in the enclosed waiver request; many of those applications have been granted by the FCC; and many of those stations are constructed and operating. Additionally, NABER has approved and forwarded Clarity's request for nationwide exclusivity on the 929.6875 MHz frequency, subject to the FCC's determination with regard to this waiver request.

If you have any questions or require additional information concerning this matter, kindly contact the undersigned.

Sincerely,

Frederick M. Joyce

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**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the matter of:

Application of Greenline Partners, Inc. )  
for exclusive use of 929 )  
MHz Private Carrier Paging facilities )  
at various locations in the U.S. )

File No. \_\_\_\_\_

To: Chief, Land Mobile & Microwave Division

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**REQUEST FOR RULE WAIVER**

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Frederick M. Joyce  
Christine McLaughlin

Its Counsel

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April 21, 1994

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**SUMMARY**

Greenline Partners, Inc. and its affiliated entity, Clarity Medical Corporation, request a temporary waiver of the 300 transmitter requirement of 47 C.F.R. § 90.495, so that they may obtain nationwide exclusivity on one of Greenline's 929 MHz PCP channels for the LabAlert Medical Data Channel.

LabAlert is a unique service developed by Clarity, which provides signalling and data services to health care providers. With LabAlert, health care providers can receive up-to-the-minute patient information from medical labs on a variety of receive devices, and can download that data to any PC. Because LabAlert provides time-critical medical information, this service cannot risk the interference inherent in shared-channel operations.

Clarity has submitted a request for nationwide exclusivity on one of Greenline's PCP channels; however, a waiver is necessary because Clarity and Greenline do not currently meet the 300 transmitter requirement. LabAlert service requires great precision in the placement of transmitters, generally at or near a subscribing hospital; any lapses in coverage may result in the loss of emergency medical data. Because LabAlert transmitters cannot be placed just anywhere, Clarity cannot know in advance where its sites will be located; hence, it would be difficult for Clarity to apply for or construct multiple transmitters at any one time.

Consequently, Clarity requests a three-year waiver of the 300 transmitter Rule, similar to the FCC's "slow growth" Rule, to allow it to develop this vital medical communications service.

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To: Chief, Land Mobile & Microwave Division

**REQUEST FOR RULE WAIVER**

Greenline Partners, Inc., ("Greenline") and its affiliated entity Clarity Medical Corporation ("Clarity"), through their attorneys, and pursuant to Sections 1.931(a) and 90.151 of the Commission's Rules, 47 C.F.R. §§ 1.931(a) and 90.151, hereby request a temporary waiver of Section 90.495 (a)(3) of the Commission's Rules, 47 C.F.R. § 90.495(a)(3), as adopted in Amendment of the Commission's Rules to Provide Channel Exclusivity to Qualified Private Paging Systems at 929-930 MHz, Report and Order, PR Docket No. 93-35, FCC 93-479, 58 Fed. Reg. 62289 (November 26, 1993) (hereinafter, the "Order").<sup>1</sup>

The purpose of this waiver is to request that the FCC designate one of Greenline Partners' previously-licensed 929 MHz PCP frequencies as exclusive on a nationwide basis, though it does not yet have authorizations for the 300 transmitters necessary under the rules to qualify for exclusivity. (Of five PCP

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<sup>1</sup> To the extent necessary, Greenline and Clarity also request a waiver of the current 47 C.F.R. § 90.496(a), which limits the use of extended implementation schedules to new licensees.

frequencies currently licensed to Greenline Partners, the 929.6875 MHz appears to be the most "open" frequency nationwide, and is the frequency for which Greenline filed an exclusivity request. Nevertheless, as explained herein, Greenline would be willing to accept any 929 MHz frequency of the FCC's choosing, so long as it could be designated as exclusive for Clarity's LabAlert services).

As the ensuing discussion explains, because of the importance to the public and the unique nature of the LabAlert medical services that Clarity will be providing on this PCP frequency nationwide, a grant of this waiver request would be in the public's interest.

**I. Explanation of Clarity's Service**

Clarity is in the midst of testing and deploying a unique wireless communications network called the LabAlert Medical Data Channel ("LabAlert"). This service will be provided over the 929 MHz private carrier paging facilities that are licensed to Clarity's affiliated entity, Greenline.<sup>2</sup> This PCP network will be used to distribute medical information to health care providers,

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<sup>2</sup> Attached hereto as Exhibit One is a listing of the applicable PCP station call signs. Greenline is actually licensed on five different 929 MHz frequencies, because it was unable to find one frequency that was "clear" nationwide (they are: 929.2375, 929.2625, 929.6875, 929.7375, 929.7875). The 929.6875 frequency appears to be the least used of these frequencies; however, it appears that fewer entities have requested exclusivity on the 929.2375 MHz frequency. If the FCC believes that the 929.2375 MHz frequency, or any other 929 MHz frequency, would be more suitable for the LabAlert service, Clarity would certainly amend its pending exclusivity request to specify operation on that other frequency. The key point, as explained herein, is that it is not technically or economically viable for the LabAlert system to use multiple, shared frequencies.

from clinical laboratories. Clarity has already devoted considerable time, energy, and money into the development of the LabAlert service. It is a service that is operational, and its unique public interest benefits warrant special attention under Part 90 of the Rules.

**Specific Objectives.**

In introducing the LabAlert service to the medical community, along with its attendant wireless capabilities, Clarity designed and implemented a unique system of data delivery and retrieval that utilizes the most advanced technologies available; several components of this system were developed by Clarity, and are the subject of pending patent applications. With the unique design of the LabAlert service, and through tying the users of this network together, hospitals, remote physician's offices and clinical labs, health care providers can now receive time-critical information from multiple labs in a considerably expedited manner. As a result, with both timely precision and accuracy, the LabAlert service will streamline the flow of medical information as it dispatches lab data to physicians and health care providers in or away from the hospital.

The benefits to medical service providers, and to patients, from the LabAlert service are obvious the minute the service is described to them. For the first time, critical patient data is available to physicians the moment it becomes available from the lab. In addition to the speed with which LabAlert makes medical data available, the system is also capable of prioritizing that

data, ensuring that health care providers are alerted to particularly critical data or "panic values." This causes more efficient delivery of health care services, and a dramatic shortening in the length of hospital visits. The LabAlert system streamlines medical workflow by dispatching lab data with pinpoint precision to individual health care providers wherever they may be, in or away from the hospital.

The LabAlert system is simply the most economical and reliable method available today to distribute medical information; and it is operating today in various parts of the Country. This is not an "experimental" or drawing-board proposal; LabAlert exists today, and it has already had a measurable, favorable impact on the cost and quality of health care services.

**Critical Need for an Exclusive PCP Channel.**

When Clarity began developing the LabAlert service, it faced a dilemma all too familiar to many smaller communications entrepreneurs: the lack of available radio frequencies. After exploring many possibilities, none of which met LabAlert's operational requirements or Clarity's start-up budget, Clarity turned to the Private Radio Services, in particular, the 900 MHz PCP services, as a last resort.

So it was that approximately two years ago, Clarity's affiliated entity, Greenline Partners, discovered that certain 900 MHz PCP frequencies were virtually unused nationwide. Greenline applied for and was granted licenses on these frequencies, and began constructing and operating them for LabAlert service



nationwide.<sup>3</sup>

At this writing, Greenline is licensed for approximately 150 transmitter sites in all of the top 34 markets nationwide. Greenline is continuing to license and build new sites each quarter, as additional hospitals and medical centers join the LabAlert service.

**Unique Nature of this Service.**

Unlike conventional paging service providers, which can use essentially the same transmitter sites as their paging competitors in most every major market, Clarity's transmitter site locations are uniquely driven by the needs of the health care provider customer. For instance, a LabAlert transmitter must typically be installed at or near a hospital or medical center in order to ensure complete coverage of the medical facilities. Due to the critical nature of the patient data being transmitted, inadequacies in coverage are not acceptable; Clarity, its health care provider customers, and their patients, cannot afford to discover after the fact that a particular transmitter site does not provide a reliable signal to portions of a hospital building. Indeed, prior to installing the service, Clarity personnel perform actual field tests of transmitter signal strength, using existing transmitters for benchmarks, to determine the optimum locations for the LabAlert transmitter.

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<sup>3</sup> Clarity and Greenline would be willing to turn in any of the five PCP frequencies that they currently hold, if the FCC could locate any one 929 MHz frequency that could be designated as exclusive nationwide for LabAlert services.

These unique operational requirements explain why it has been particularly difficult for Clarity to meet the 300 transmitter requirement at this time. Clarity simply cannot install its transmitters at just any location in a given community; it must first determine where the health care provider customer needs a transmitter most. This hospital-based transmitter site requirement also makes it difficult for Clarity to meet the local or regional exclusivity rules, absent a rule waiver.<sup>4</sup>

Moreover, because the LabAlert system must be customized for each medical facility in an area, it is necessary that at least one medical facility actually subscribe to LabAlert before Clarity constructs a system in that area. Due to varying budget cycles, a hospital or medical center that wishes to subscribe to LabAlert may not be able to do so until it receives approval from a governing board, or until its next fiscal period. The delays inherent in this process add to the difficulties of building out a 300 transmitter system within the time permitted under the Rules.<sup>5</sup>

It is simply critical to the success and utility of LabAlert that the system be licensed on one "clear" channel nationwide. As

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<sup>4</sup> Nonetheless, if the FCC denies this waiver request with regard to the 300 transmitter site minimum required, Clarity requests at least eight months from the date of that denial to obtain authorizations for the additional transmitter sites needed to reach the 300 count.

<sup>5</sup> Since transmitter placement is essential to the proper functioning of the LabAlert system, it is difficult for Clarity to apply for additional sites until a medical institution subscribes and field tests have been conducted. Until those steps are completed, Clarity has no way of knowing where it will construct its base stations, and any sites for which Clarity would apply would likely be subject to substantial changes.

is evident from the nature of the information provided by LabAlert -- critical medical information -- the service cannot risk any form of shared channel interference. In the case of the LabAlert service, a message that becomes "lost" from a clinical lab due to co-channel interference, could truly mean the difference between life and death for the affected patient.

Multiple PCP frequencies would also pose signal coverage problems for the health care providers that use LabAlert. For instance, since many doctors travel over large geographic areas which might include multiple signal coverage areas, they would face problems in receiving a LabAlert signal if Clarity could not obtain a license for the same PCP frequency in adjoining service areas.

In sum, LabAlert is not just another conventional "paging" service; it is a fully-integrated medical data network. Because of the complexities of this network, Clarity and its customers simply cannot afford to operate on more than one PCP channel, which would require multiple inventories of expensive, essential network equipment. The signal coverage problems that could occur with multiple frequencies could be so severe as to be a health threat. Moreover, doctors who are familiar with the congestion attendant to paging operations have expressed concerns about using the LabAlert service if the network would be shared with paging services. For all these reasons, the LabAlert service will need a single, exclusive PCP frequency if this worthwhile service is to meet its full potential.

**Implications of the Exclusivity Order.**

In the midst of the development of LabAlert on these PCP channels, the FCC initiated its exclusivity rulemaking proceedings. The timing of those proceedings, and the adoption of exclusivity Rules, was particularly propitious for LabAlert, for reasons just stated. For LabAlert to meet its full potential, it must operate on a common channel, without threat of interference from shared-channel licensees.

Clarity has every intention of ultimately meeting the requirements for nationwide PCP exclusivity, and commends the FCC for its speed in adopting these rules. The only problem for Clarity is that, in the absence of this waiver, by the time it has built the 300 transmitters needed to obtain exclusivity, the advantages of exclusivity will have been dissipated due to interim licensing on the 929.6875 (or 929.2375) MHz channel. Consequently, a short-term grant of this waiver request is critical to the success of LabAlert.

**Existing and Potential Customers.**

As previously mentioned, Clarity already provides the LabAlert services to the medical community. LabAlert has already received high praise from the doctors and health providers who employ it. At the FCC's request, Clarity could provide the Commission with a list of references who use the LabAlert service, and who would recommend that the FCC take whatever steps possible to help develop this service nationwide. Some of these references hold senior positions at some of the most highly-respected hospitals in the

nation.

The list of potential customers for the LabAlert service is equally impressive. At this writing, Clarity is in the midst of discussions with a large government-affiliated health care service provider, that has expressed considerable interest in employing the LabAlert service throughout the Nation. If that occurs, then Clarity will in a very brief time be constructing well over the 300 transmitters needed for nationwide exclusivity.<sup>6</sup>

**Equipment.**

Because of the unique nature of the LabAlert service and its obvious potential for nationwide growth, Clarity must maintain the confidential nature of most of its network configuration. As stated previously, Clarity has applied or will apply for patents for several components of its system; public disclosure of that technology could jeopardize Clarity's patent rights.<sup>7</sup> Nevertheless, some of the equipment to be used in conjunction with the network is as follows:

A. Receive Devices. The receive devices that can operate on the LabAlert service include the following:

1. A micro hand held alphanumeric data receiver. These devices can store up to 32 patient records, and the information received by these devices can be downloaded into a PC.

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<sup>6</sup> It may still be necessary, however, for Clarity to obtain a waiver of the requirement to serve two markets in each of the seven "RBOC" regions.

<sup>7</sup> If the FCC desires, Clarity can submit more detailed technical information concerning the LabAlert system for in camera review.

2. The LabAlert Palmtop, a computer with an integrated data receiver. The LabAlert Palmtop monitors real-time lab data for over 200 patients, and automatically updates patient information.

B. The "CommGateway". The communications gateway for the LabAlert system is a UNIX-based network server which acts as the central point of information distribution to hand held receivers such as those discussed above, fax machines, remote terminals and two-way wireless devices. This network server has been designed interface with multiple systems and to route data quickly to the appropriate health care provider.

The LabAlert system has numerous other features which make it a unique and valuable service to medical professionals. For example, the system has an acknowledgement function, whereby it resends data for "panic values" and "stat" tests until an acknowledgement is received. Compression and encryption of data ensures the confidentiality of patient information. Clarity has also developed a messaging software which permits health care providers to send messages to the hand held receivers from any PC.

## II. Nature of the Waiver Request.

Clarity's LabAlert service is an eligible service under the PCP rules. See 47 C.F.R. § 494(c). The LabAlert service will be carried on Greenline's PCP network in complete compliance with the newly adopted PCP rules. The only problem facing Clarity is that, by the time demand for LabAlert "takes off," and by the time it determines precisely where its anticipated 300-plus transmitters

should be located, the FCC may have licensed numerous paging operators onto the subject 929 PCP frequencies.

The Order adopted provisions for "slow growth" of systems of 30 transmitters or more; however, the FCC limited the "slow growth" option to future licensees. See Order at n.43. Since Greenline held licenses for the subject 929 MHz frequencies prior to the Commission's PCP exclusivity proceeding, the new Rules preclude Greenline from qualifying for "slow growth."

Clarity is aware that the Order's "slow growth" provisions have been the subject of petitions for reconsideration; should the FCC decide to permit incumbents to qualify for "slow growth," that decision would alleviate many of Clarity's difficulties. Nonetheless, Clarity's request may not perfectly fit the "slow growth" requirements. Firstly, Greenline currently holds licenses for half the number of transmitters required for nationwide exclusivity; it does not appear that the "slow growth" Rule permits additional time for a licensee claiming exclusivity to apply for multiple transmitters, but only to construct transmitters for which it has applied. See 47 C.F.R. § 90.496; see also Order at ¶¶ 23-24. Because of the precision and care with which Clarity and Greenline's transmitters must be placed, they cannot readily apply for the requisite number of transmitters at one time. Moreover, because of the necessity for hospital-based transmitters, any construction timetable provided by Clarity would be subject to

continuous revision.<sup>8</sup>

Unless Clarity is granted exclusivity, the results will be chaotic and catastrophic for the LabAlert system: shared channel licensees will simply not be able to coordinate their operations with every LabAlert transmitter due to their unique hospital locations. Also, because of the enormous level of traffic that LabAlert generates, 24 hours per day, seven days per week, co-channel licensees will undoubtedly lack sufficient airtime on this shared channel. Of fundamental concern, of course, is the distinct possibility that critical medical information will be delayed or lost due to shared channel interference.

Clarity is only asking for some minimal assistance from the FCC to ward off this potential nightmare, and to encourage the development of a worthy public service. Right now, before any additional applicants are coordinated onto the subject frequency, the FCC can designate this channel as "exclusive" on a nationwide basis, for at least a brief three year time period. If, by the end of that time period, Clarity has not met the 300 transmitter rule nationwide, Clarity would not object to the channel being "opened" to new applicants, assuming the channel does not qualify as exclusive on either a local or regional basis. Nevertheless, Clarity is confident that by the end of that brief time period, the

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<sup>8</sup> Additionally, during the pendency of the petitions for reconsideration in Docket 93-35, a number of Greenline's construction periods may expire. Hence, without an immediate waiver, Greenline and Clarity may lose a number of authorizations that might otherwise be able to receive "slow growth" extensions should the Commission permit incumbents to apply for such extensions.



channel will be fully utilized by LabAlert customers.<sup>9</sup>

III. Special Circumstances Warrant a Waiver.

The Commission is certainly empowered to grant waivers of its Rules. "The agency's discretion to proceed in difficult areas through general rules is intimately linked to the existence of a safety valve procedure for consideration of an application for exemption based on special circumstances." WAIT Radio v. FCC, 418 F.2d 1153, 1157 (D.C.Cir. 1969)(citations omitted). Such "special circumstances" are present in the case of Clarity's LabAlert service.

First and foremost, the very nature of the LabAlert service is to improve the quality of health and medical services for everyone, throughout the nation. LabAlert can improve these services, while saving us all millions of dollars in lost time, money, and resources, which typically occurs in the process of delivering lab results to health care providers. Thus, this waiver will benefit hundreds of thousands of people (patients) who will never even subscribe to the LabAlert system themselves.

Unlike communications services that can be provided to the public by any number of SMRS or PCP licensees, Clarity's LabAlert

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<sup>9</sup> Clarity is aware of the fact that there are a small number of "grandfathered" licensees on the subject PCP frequencies. If those licensees actually construct their stations in a timely manner, Clarity will certainly cooperate with those licensees where they are located to avoid causing co-channel interference, as required under the Rules. Additionally, Clarity would be willing to enter affiliation arrangements with "grandfathered" co-channel licensees to provide LabAlert service in the "shared" geographic areas. Moreover, if the FCC grants Clarity exclusivity on any 929 MHz frequency, Clarity will gladly return its licenses for the other frequencies to the FCC for reassignment to other licensees.

service is unique from any other communications service currently available. No other single system can provide all the data and communications services provided by the LabAlert system; LabAlert combines data, signalling, storage and other services into a single service. The LabAlert system prioritizes patient information, stores patient records, automatically updates data, and can transmit that data to a wide variety of receiving units, which can in turn "communicate" with standard PCs. Since much of the technology that permits LabAlert to perform its many functions was developed and may be patented by Clarity and its affiliated entities, no other party would be capable of duplicating the LabAlert system.

This waiver request is thus akin to requests made by public health and safety service providers, in that the loss or diminution of the LabAlert service, which could "not be readily duplicated", could have an adverse impact on the health needs of entire communities. See, e.g., County of Los Angeles, 66 RR2d 1035, 1037 (Priv. Rad. Bur. 1989). Because this unique, life-saving service will not be possible in many areas absent a waiver, Clarity respectfully submits a grant of the requested waiver is supported by Commission precedent and will serve the public interest.

#### **IV. Public Interest Considerations Warrant a Waiver.**

Where public interest considerations are present, as in this case, the FCC has previously allowed reallocation of channels, it has granted extended construction periods, and it has even reinstated previously canceled licenses. See Id.; see also, New

York City Transit Authority, 66 RR2d 1029 (1989) (reinstating canceled SMRS licenses due to public interest considerations); Southern California Rapid Transit District, 67 RR2d 328 (1989) (FCC located and granted unusual assignment of land mobile channels for light rail service to local government).

Clarity is not requesting any rule waivers as drastic as those. Rather, in light of the demonstrable public interest considerations attendant to the LabAlert service, Clarity merely requests a temporary waiver of the 300 transmitter rule, so that it can develop LabAlert on an exclusive basis for the next three years, without fear of shared channel interference to this critical health service.<sup>10</sup> During that time period, Clarity will provide the FCC with annual construction progress reports, in keeping with the spirit of Section 90.496 of the Rules, the "Extended implementation schedule" rule.

In the past two to three years, Clarity has been unable to locate any channels other than the subject PCP channel to meet the needs of the LabAlert service. Thus, it has no choice but to proceed implementing the service on the best channel available. Since, by the end of the brief three year waiver period, Clarity intends to be in full compliance with most of the pertinent PCP exclusivity rules, a grant of this request should be deemed de

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<sup>10</sup> Clarity could provide the FCC with a construction timetable, and reasonable assurances of its ability to finance the construction of all 300 sites, at the FCC's request. However, in light of the customer-specific nature of transmitter sites, such a timetable, at this writing, could be subject to substantial changes as new customers join the LabAlert network.

minimis and in the public's interest. Compare with Big Bend Telephone, 2 FCC Rcd. 2413, 2414 (1986) (citations omitted); and, Nevada Bell, 68 RR2d 492, 493 (1990) (wherein rule waivers requested to use frequencies for purposes other than authorized).

**Conclusion**

For all the foregoing reasons, Greenline and Clarity respectfully request that a grant of this Request for Waiver would be in the public's interest, and that it should be granted.

GREENLINE PARTNERS, INC.  
CLARITY MEDICAL CORPORATION

By: 

Frederick M. Joyce  
Christine McLaughlin

Their Attorneys

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Date: April 21, 1994

**EXHIBIT ONE****GREENLINE PARTNERS, INC./CLARITY MEDICAL CORP.****PCP Licenses**

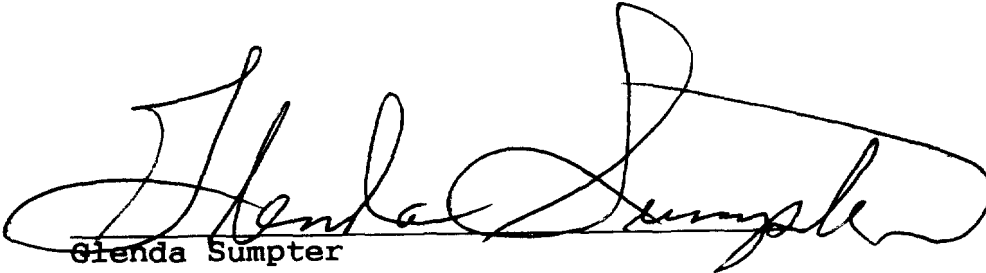
<b><u>Principal City</u></b>	<b><u>Callsign</u></b>	<b><u>Frequency</u></b>
Albuquerque, NM	WPCE359	929.2375 MHz
Atlanta, GA	WPDM316	929.2625
Austin, TX	WPCY865	929.2375
Baltimore, MD	WPCE375	929.6875
Boston, MA	WPBY889	929.6875
Charlotte, NC	WPDC442	929.2375
Chicago, IL	WPCE354	929.2375
Dallas, TX	WPCE353	929.2375
Denver, CO	WPDG772	929.2625
Detroit, MI	WPBY888	929.7875
Indianapolis, IN	WPCE362	929.2375
Hartford, CT	WPCE376	929.6875
Houston, TX	WPDR318	929.2375
Kansas City, MO	WPDC439	929.2375
Las Vegas, NV	WPCE360	929.2375
Los Angeles, CA	WPCE377	929.8125
Los Angeles, CA	WNUR249	929.6875
Miami, FL	WPDC438	929.2375
Minneapolis, MN	WPCE355	929.2375
New York, NY	WPBY887	929.6875
Orlando, FL	WPCE364	929.2375
Philadelphia, PA	(pending)	
Phoenix, AZ	WPCE357	929.2375
Pittsburgh, PA	WPBY892	929.6875
Portland, OR	WPDC440	929.2375
Raleigh-Durham, NC	WPDG744	929.2625
Sacramento, CA	WPCE358	929.6875
St. Louis, MO	WPCE356	929.2375
Salt Lake City, UT	WPDC441	929.2375
San Antonio, TX	WPCE363	929.2375
San Diego, CA	WPBY891	929.8125
San Francisco, CA	WPDC437	929.6875
Seattle, WA	WPBY890	929.7875
Washington, DC	WPBY886	929.6875
West Palm Beach, FL	WPCE361	929.2375

**CERTIFICATE OF SERVICE**

I, Glenda Sumpter, a secretary in the law firm of Joyce & Jacobs, do hereby certify that on this 21st day of April, 1994, copies of the foregoing Request for Rule Waiver were delivered by hand to the following:

Rosalind K. Allen, Chief  
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Glenda Sumpter